

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3915 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANUBHAI K VANKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3915 of 1993
MR PV HATHI for Petitioner No. 1
MR PRADIP BHATE A.G.P. for Respondent No. 1-2
MR DN PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/02/2004

ORAL JUDGEMENT

In this petition, the petitioner has made a grievance that the decision not to select him for appointment to the post in Class-II as direct recruit on the ground of age bar was absolutely erroneous and that

has caused him grave injustice. He has also prayed for quashing and setting aside the order dated 20th June, 1983 by which it was decided that no age relaxation could be made in the matter of appointment to the post in Class-II.

2. Record of the petition shows that the petitioner had obtained Diploma in Civil Engineer in the year 1965 and he joined the service of the State Government as Overseer in the Agricultural Department on 25th October, 1967. On 21st March, 1980, he was selected through Gujarat Public Service Commission as Junior Engineer and he was appointed as direct recruit for the said post. In the month of December, 1981, he made an application to the Gujarat Public Service Commission for appointment in Class-I and/or Class-II post. He thereafter appeared in the examination that was held in the month of February, 1982 and he was also called for Viva Voce, and Personality Test and for oral interview on 15th March, 1983. However, as stated above, on account of age bar, he was not selected and the said decision was intimated to him by order dated 20th June, 1983. Against the said order, he made representation on 30th July, 1983, but the same was rejected. In due course, he was promoted as Deputy Engineer (Deputy Executive Engineer) on 29th March, 1989. Now it is stated that having reached the age superannuation, he has retired from the service while on this post.

3. Mr.P.V. Hathi, learned advocate appearing for the petitioner has submitted that in the case of one Mr. Kabbur, who was similarly situated and who had made petition in this Court wherein, identical grievance was made. This Court in Special Civil Application No. 2780 of 1980 had granted appropriate relief and due to it Mr. Kabbur could reach the post in Class-I service. This decision has been reported in 1992 (2) G.L.H. at page 469. It is the submission of Mr. Hathi that the petitioner also be granted the same benefit. However, considering the fact that the decision challenged is of 20th June, 1983 and now that the petitioner has retired from the service, no useful purpose will be served by going into the merits of the case and if found fit to grant the relief prayed for in this petition. May be that Mr. Kabbur was identically situated and he had prayed for the identical relief in the aforesaid petition, the fact remains that the said petition was decided in the year 1992 when the things were very fresh. This petition is of 1993, the petitioner could have got heard this matter urgently and could have got it decided on the same line. However, that has not been done.

3.1. In fact, it may be noted here that the petitioner could have challenged this petition immediately after the impugned order was passed that was in the month of June, 1983. He waited for 11 long years to approach this Court. It appears that initially he did not have any intention to agitate this issue before this Court. It was only when Mr. Kabbur's case came to be decided in favour of Mr. Kabbur, the petitioner had second thoughts and had approached this Court, and that too after he received promotion. That delay itself was fatal to this petition. However, with the aforesaid additional ground, there is nothing more required to be done in this petition.

In view thereof, it is now not proper to grant this petition and also the relief prayed therein, at such a belated stage. This petition has become infructuous and it is required to be dismissed. The petition is dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/